`IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

:::

JUDGMENT

Pabu Lal.
vs.
Municipal Council, Pali.

S.B.CIVIL SECOND APPEAL NO.125/2002 UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 29.4.2002 PASSED BY SHRI MURLIDHAR VAISHNAV, DISTRICT JUDGE, PALI IN CIVIL APPEAL (DECREE) NO.12/1996.

DATE OF JUDGMENT ::: 25.4.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. MC Bhoot, for the appellant.
Mr. Yashwant Mehta, for the respondent.

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BY THE COURT:

Heard learned counsel for the parties.

The plaintiff/appellant is aggrieved against judgment and decree dated 29.4.2002 passed by the first appellate court by which it allowed the appeal of the respondent/defendant and dismissed the suit of the

plaintiff for specific performance of contract dated 22.5.1966.

Brief facts of the case are that according to the plaintiff, the plot no.98 of Tilak Nagar Scheme, Pali was allotted to the plaintiff/appellant for a consideration of Rs.2,000/-. The appellant paid Rs.100/- vide receipt dated 22.5.1966. According to the appellant, he went on offering the remaining amount of Rs.1,900/- to the defendant but they did not accept the amount from the appellant. The defendant did not gave any notice demanding the said amount from the appellant. The appellant pleaded that he is in possession of the plot in dispute. With these facts, the plaintiff filed the suit for specific performance of contract of the year 1966 on 25.4.1989 after delay of about 23 years.

The trial court decreed the suit of the plaintiff after holding that the defendant agreed to sale the plot to the plaintiff and the plaintiff is in possession of the suit property. The trial court's judgment and decree dated 30.9.1996 was challenged by the respondent. The first appellate court in detail considered how the contracts can be entered into by the local bodies. The first appellate court also considered the fact that the entire foundation for claiming specific performance of the contract is receipt Ex.2 which contains neither the number of plot nor description nor actual cost of the plot etc. After examining the legal position and the facts of the case in detail, the first appellate court reversed the finding of

the trial court and dismissed the suit. Hence, this second appeal.

Learned counsel for the appellant vehemently submitted that large number of plots were allotted and a list was prepared by the respondent Municipal Board, Pali. The defendant in its written statement admitted that the allotment of the plot to the plaintiff was cancelled but it did not produce any documentary evidence regarding cancellation of plots. It is also submitted that the defendant did not produce any evidence to show that the amount accepted by the defendant was not for the plot no.98. It is also submitted that the plaintiff is in possession of the property in dispute and, therefore, the first appellate court committed serious error of law in reversing the finding of the trial court.

I have considered the submissions of learned counsel for the appellant and perused the facts of the case as well as record.

It is not in dispute that there is no written contract for sale/allotment of plot to plaintiff by the defendant Municipal Board, Pali. Only document in support of alleged agreement for sale of plot is alleged receipt which is of the year 1966 and the suit has been filed after 23 years, in the year 1989. The local bodies and the officers of the local bodies can act only within the jurisdiction given to them by the provisions of the relevant Act and in this case, Rajasthan Municipalities act. The oral agreement by

the local bodies are excluded by statutory provision and how agreements are to be executed is also provided in the Act and the Rules itself. Apart from the above legal position dis-entitling the plaintiff from maintaining the suit for specific performance of contract for want of any written contract, it is clear that there was no material available on the record to show that the suit property was decided to be disposed of for consideration of Rs.2,000/-. Not only this but the receipt also nowhere discloses that the amount mentioned in it has been taken for sale of plot in dispute. In addition to above, the plaintiff's vague contention that he went to the defendant offering the remaining amount of sale price to the defendant since 1966 to 1989, deserves to be rejected summarily and if the plaintiff's offer was not accepted by the defendant since 1966 and the plaintiff did not approach court of law immediately thereafter, than that is sufficient proof of the fact that the plaintiff was never ready and willing to perform his part of contract.

Learned counsel for the appellant submitted that in the same scheme, number of persons were allotted plots and, therefore, the plaintiff's case should have been considered by the respondent at par with those persons. I do not find any force in such submission because of the simple reason that the property of the State cannot be disposed of in this manner where the plaintiff himself failed in proving his claim and paid a token amount of Rs.100/- in the year 1966 and did not pay Rs.1900/- for about 23 years (if sale

consideration is accepted as Rs.2,000/- and which is not proved). At the cost of repetition, it may be observed that said agreement set up by the plaintiff is of the year 1966 and the suit has been filed in the year 1989 and the plea was taken by the respondent when the price has gone up multifold, therefore, it will be inequitable and unjust to grant any relief.

In view of the above, I do not find that any substantial question of law arises in this appeal, therefore, this appeal deserves to be dismissed, hence, dismissed.

(PRAKASH TATIA), J.

S.Phophaliya